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15 IN THE UNITED STATES DISTRICT COURT
16
17 EASTERN DISTRICT OF CALIFORNIA

18 UNITED STATES OF AMERICA,

19 CASE NO. 2:20-CR-0004-TLN

20 Plaintiff,

21 STIPULATION REGARDING EXCLUDABLE
22 TIME PERIODS UNDER SPEEDY TRIAL ACT;
23 FINDINGS AND ORDER

24 RUBEN ANGEL CASTRO,

25 DATE: September 22, 2022

26 v.
Defendant.

27 TIME: 9:30 a.m.

28 COURT: Hon. Troy L. Nunley

29
30 By previous order, this matter was set for status on September 22, 2022. By this stipulation and
31 proposed order, the parties respectfully request that the Court continue the status conference until
32 November 3, 2022. To the extent it is needed, this stipulation supplements the basis for exclusion of
33 time under the Court's General Orders addressing public health concerns, and requests that the Court
34 also exclude time between September 22, 2022, and November 3, 2022, under Local Code T4, for the
35 reasons set forth below.

36
37 On April 17, 2020, this Court issued General Order 617, which suspends all jury trials in the
38 Eastern District of California scheduled to commence before June 15, 2020, and allows district judges to
39 continue all criminal matters to a date after June 1. This and previous General Orders were entered to
40 address public health concerns related to COVID-19.

41
42 Although the General Orders address the district-wide health concern, the Supreme Court has
43 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive

1 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.
 2 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no
 3 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
 4 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
 5 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally
 6 or in writing”).

7 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 8 and inexcusable—General Orders 611, 612, and 617 require specific supplementation. Ends-of-justice
 9 continuances are excludable only if “the judge granted such continuance on the basis of his findings that
 10 the ends of justice served by taking such action outweigh the best interest of the public and the
 11 defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless
 12 “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the
 13 ends of justice served by the granting of such continuance outweigh the best interests of the public and
 14 the defendant in a speedy trial.” *Id.*

15 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
 16 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
 17 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
 18 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
 19 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
 20 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*
 21 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
 22 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a
 23 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

24 In light of the societal context created by the foregoing, this Court should consider the following
 25 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
 26 justice exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date

27
 28 ¹ The parties note that General Order 612 acknowledges that a district judge may make
 “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.
 Cal. March 18, 2020).

1 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any
2 pretrial continuance must be “specifically limited in time”).

3 **STIPULATION**

4 1. By this stipulation, defendant now moves to continue the status conference until **November
5 3, 2022, at 9:30 a.m.**, and to exclude time between September 22, 2022, and November 3, 2022, under
6 the Court’s General Orders and Local Code T4.

7 2. The parties agree and stipulate, and request that the Court find the following:

8 a) The government has produced the discovery associated with this case which
9 includes, among other things, a considerable number of investigative reports, video surveillance,
10 audio recordings, and laboratory reports. The government produced this discovery via a file
11 sharing cloud platform, to which defense counsel has access.

12 b) Counsel for defendant needs additional time to go through the discovery. Counsel
13 will also need time to consult with her client, to review the current charges, to conduct investigation
14 and research related to the charges, to review discovery for this matter, to discuss potential
15 resolutions with her client, to prepare pretrial motions, and to otherwise prepare for trial.

16 c) Counsel for defendant believes that failure to grant the above-requested
17 continuance would deny counsel the reasonable time necessary for effective preparation, taking
18 into account the exercise of due diligence.

19 d) The government does not object to the continuance.

20 e) Based on the above-stated findings, the ends of justice served by continuing the
21 case as requested outweigh the interest of the public and the defendant in a trial within the original
22 date prescribed by the Speedy Trial Act.

23 f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
24 et seq., within which trial must commence, the time period of September 22, 2022 to November
25 3, 2022, inclusive, is deemed excludable pursuant to the Court’s General Orders, and pursuant to
26 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted
27 by the Court at defendants’ request on the basis of the Court’s finding that the ends of justice
28 served by taking such action outweigh the best interest of the public and the defendant in a speedy

1 trial.

2 3. Nothing in this stipulation and order shall preclude a finding that other provisions of the
3 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
4 must commence.

5 IT IS SO STIPULATED.

6 Dated: September 20, 2022

7 PHILLIP A. TALBERT
United States Attorney

8 /s/ JAMES R. CONOLLY
9 JAMES R. CONOLLY
Assistant United States Attorney

10 Dated: September 20, 2022

11 /s/ LINDA C. ALLISON
12 LINDA C. ALLISON
13 Assistant Federal Defender
14 Counsel for Defendant
15 RUBEN ANGEL CASTRO

16 **FINDINGS AND ORDER**

17 IT IS SO FOUND AND ORDERED this 20th day of September, 2022.

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19 _____
20 Troy L. Nunley
21 United States District Judge